

## § 1952.204

### § 1952.204 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR part 1902, and after determination that the State met the “fully effective” compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL-CIO v. Marshall* (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Minnesota State plan for a period of at least one year following certification of completion of developmental steps (41 FR 42659). Based on the 18(e) Evaluation Report for the period of October 1982 through March 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Minnesota’s occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the Minnesota plan was granted final approval, and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective July 30, 1985.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Minnesota. The plan does not cover private sector offshore maritime employment on the navigable waters of the United States; employment at the Twin Cities Army Ammunition Plant; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; any tribal or private sector employment within any Indian reservation in the State; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in “agricultural employment” within

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the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Minnesota retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

(c) Minnesota is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[50 FR 30832, July 30, 1985, as amended at 62 FR 2561, Jan. 17, 1997; 65 FR 36622, June 9, 2000]

### § 1952.205 Level of Federal enforcement.

(a) As a result of the Assistant Secretary’s determination granting final approval to the Minnesota plan under section 18(e) of the Act, effective July 30, 1985, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Minnesota plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil

penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Minnesota plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector off-shore maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments, as they relate to employment under the exclusive jurisdiction of the Federal government on the navigable waters of the United States. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.204(b). Federal jurisdiction is also retained over the Twin Cities Army Ammunition Plant; over Federal government employers and employees; over any tribal or private sector employment within any Indian reservation in the State; and over the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required perform-

ance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Minnesota State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or

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proceedings for withdrawal of plan approval.

[50 FR 30832, July 30, 1985, as amended at 62 FR 2562, Jan. 17, 1997; 65 FR 36623, June 9, 2000]

### § 1952.206 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 230 S. Dearborn Street, 32nd Floor, Room 3244, Chicago, Illinois 60604; and

Office of the Commissioner, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, Minnesota 55155.

[65 FR 36623, June 9, 2000]

### § 1952.207 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Minnesota's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(b) *Temporary labor camps/field sanitation.* Effective February 3, 1997, the Assistant Secretary approved Minnesota's plan amendment, dated July 24, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities). The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Minnesota pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

[59 FR 14556, Mar. 29, 1994, as amended at 62 FR 2562, Jan. 17, 1997]

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### Subpart O—Maryland

#### § 1952.210 Description of the plan as initially approved.

(a) The Division of Labor and Industry in the Department of Licensing and Regulation is the State agency designated by the Governor to administer the plan throughout the State. The plan defines the covered occupational safety and health issues on the basis of Major Groups in the Standard Industrial Classification (SIC) Manual of the Office of Management and Budget of the Executive Office of the President. The Commissioner of the Division of Labor and industry promulgated the Federal standards existing as of February 2, 1973. These standards were effective in Maryland as of March 8, 1973, and they will be enforced according to current State legislative authority prior to the effective date of Maryland's enabling legislation, July 1, 1973. Maryland also intends to adopt those Federal standards applicable to ship repairing, ship building, ship breaking and longshoring except where prohibited by exclusive Federal maritime jurisdiction. Subsequent revisions to Federal standards will be considered by the State Occupational Safety and Health Advisory Board which will make recommendations on adoption of at least as effective standards to the Commissioner within 6 months after Federal promulgation. Maryland also includes in its plan State boiler and elevator standards where applicable.

(b)(1) The plan included draft legislation which has been passed by the State legislature and signed by the Governor. The legislation as enacted has been included as a supplement to the plan. Under the legislation, effective July 1, 1973, the Division of Labor and Industry in the Department of Licensing and Regulation has full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State, including coverage of public employees, with the exception of maritime workers in the areas of exclusive Federal jurisdiction; employees of the United States; and employees whose working conditions are protected under enumerated Federal laws.